healIN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 489 OF 2004

1. Vijay Mahadeo Daruwale,]
of Mumbai Indian Inhabitant, residing at]
Pratixa Vazira Village, L.T. Road,
Borivali (West), Mumbai 400 092]

2. Chaganlal Mangal Solanki,]
also of Indian Inhabitant, residing at A-41,]
Plot No. 2, Gorai Darshan Co-op. Hsg. Soc.,]
Gorai, Borivali (West), Mumbai 400 091]

3. Ramdeo Parkar,]
also of Indian Inhabitant, residing at Bungalow]
RSC Plot No. 4, Gorai Charkop Link Cross Road,]
Gorai, Borivali (West), Mumbai 400 091]

4. Rajan Desai,]
also of Indian Inhabitant, residing at Bungalow]
RSC Plot, Gorai Charkop Link Cross Road, Gorai,]
Borivali (West), Mumbai 400 091]

5. Dr. Manoj Vaid,]
also of Mumbai Indian Inhabitant, residing at]
Bungalow No. 4, RSC Plot, Gorai Charkop Link]
Cross Road, Gorai, Borivali (West),]
Mumbai 400 092]

6. Gorai Dumping Ground Hatao Kruti Samati]
(Sub Committee),]
having its office at 402, Girikunj, Plot No. 7,]
RSC 21, Gorai Charkop Link Cross Road, Gorai,]

Borivali (West), Mumbai 400 092] ...Petitioners

Versus

1. Municipal Corporation of Greater Mumbai,]
a statutory Corporation constituted under]
the provision of Bombay Municipal]
Corporation Act, 1888, through its]
Municipal Commissioner, having his office]
at Mahapalika Building, Mahapalika Marg,]
Mumbai 400 001]

2. Assistant Municipal Commissioner,]
R-Central Ward, Municipal Corporation of]
Greater Mumbai, Borivali (W), Mumbai 400 092]

3. The Secretary,]
Maharashtra Pollution Control Board,]
having its office at Chhatrapati Shivaji]
Mandal, IVth Floor, Phalton Road,]
Mumbai 400 001]

4. Maharashtra Coastal Zone Management]
Authority,]
having its office at Maharashtra Pollution]
Control Board, Kalpataru Point,]
3rd and 4th Floors, Sion Matunga Road No. 8,]
Opp. Cine Planet Cinema, Near Sion Circle,]
Sion (East), Mumbai 400 022]

5. The Principal Secretary to the State of]
Maharashtra, Mantralaya, Mumbai 400 032]

6. The Secretary, Urban Land Development Deptt.,]
Mantralaya, Mumbai 400 032]

7. State of Maharashtra,]
Mantralaya, Mumbai 400 032,]

through Government Pleader, High Court,]
Mumbai 400 023]

8. Union of India,]
through the Secretary, Ministry of]
leaches Environment and Forests, New Delhi,]
Aaykar Bhavan, New Marine Lines,]
Mumbai 400 023]

9. The Chairman, Central Electricity Authority,]
New Delhi] ...Respondents

Mr. S.A. Sawant for the Petitioners

Mr. K.K. Singhvi, Senior Advocate, with Mrs. Priti Purandare
for Respondent Nos. 1 and 2

Mr. A.A. Kumbhakoni, Associate Advocate General,
for Respondent Nos. 4 to 6

Mr. B.A. Desai, Additional Solicitor General, with Mr. Rajiv Chavan
and Mr. Y.R. Mishra instructed by Dr. T.C. Kaushik
for Respondent No. 8.

CORAM: **DALVEER BHANDARI, C.J., &**
S.J. VAZIFDAR, J.
DATE: JULY 20, 2005.

ORAL JUDGMENT (Per DALVEER BHANDARI, C.J.):-

1. This petition has been filed on behalf of the Sub Committee known as

"Gorai Dumping Ground Hatao Kruti Samiti", which has been

established with a view to prevent Gorai Creek from being used as a dumping ground.

2. The first respondent is the Municipal Corporation of Greater Mumbai; the third respondent is the Secretary, Maharashtra Pollution Control Board; the fourth respondent is the Maharashtra Coastal Zone Management Authority; the seventh respondent is the State of Maharashtra; and the eighth respondent is Union of India.

3. The first respondent-Corporation is a statutory body formed under the Bombay Municipal Corporation Act, 1888, and is duty-bound to ensure that all its residents have a healthy environment and also to secure and/or ensure that all nuisance and pollution are removed from its territorial jurisdiction. Admittedly, the site where the illegal dumping of garbage has been carried out is within the jurisdiction of the respondent.

4. Similarly, the third respondent, Maharashtra Pollution Control Board, is empowered and expected to ensure that its pollution control norms

are strictly followed by all concerned.

5. The fourth respondent, Maharashtra Coastal Zone Management Authority, has control over the Western coastal area and is under an obligation to ensure that the directives contained in the Notification dated 19th February, 1991 issued by the Ministry of Environment and Forests are strictly implemented.

6. The seventh respondent is the State of Maharashtra, who supervises and controls the activities of the first respondent-Corporation.

7. The eighth respondent, Union of India, issued the Notification dated 19th February, 1991.

8. All the respondents are instrumentalities or authorities of the State falling within the meaning of Article 12 of the Constitution of India and are amenable to the writ jurisdiction of this Court.

9. Gorai Creek falls under Coastal Regulation Zone (for short, 'CRZ' ,)

which is a No Development Zone. Bombay Municipal Corporation has chosen, on their own, Gorai Creek as a dumping place in gross violation of the directives contained in the Notification dated 19th February, 1991 issued by Union of India.

10. The Municipal Corporation's Plan ("W-9") and ("W-10") shows area adjacent to Gorai Creek as Coastal Regulation Zone (CRZ) and No Development Zone. The petitioners submitted that according to expert garbologists, dumping of garbage in CRZ is in gross violation of the said plan. The petitioners submitted that on an average, 700 truckloads of garbage collected from Bandra to Dahisar are unloaded and dumped at Gorai Creek. The petitioners further submitted that dumping of such a huge quantity of 700 truckloads weighing 2250 tons of garbage gives rise to bad stinks and environmental hazards and causes breathlessness, chest pains and other ailments to the inhabitants of the area.

11. The projected figures of garbage generated per day for the years 2004, 2008 and 2011 are estimated at 8000 tons, 11800 tons and

14000 tons, respectively, in the City of Mumbai. The capacity of Gorai Dumping, according to the petitioners, has already been exhausted as per the Environmental Status Report 1998-99. Dumping of garbage of this magnitude is extremely dangerous for the health of the people living in close proximity. The first respondent-Corporation is guilty of dereliction of duty. By reason of this illegal act on the part of the first respondent-Corporation, a great amount of pollution is caused and the coastal and environmental ecological balance is greatly disturbed and mangroves are destroyed.

12.The petitioners, in this petition, submitted that the height of the garbage being dumped in Gorai Creek area is more than 35 feet and leaches flow from this garbage and seep into the creek from all the sides. After the petition has been filed, the height has now been increased to 40 – 45 feet, which is established by later affidavits and photographs.

13. The notification issued by Union of India on 19th February, 1991 completely prohibits setting up of new industries and expansion of

existing industries, except those directly related to water front or directly needing foreshore facilities within the CRZ and manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment and Forests dated 28th July, 1989, 27th November, 1989 and 19th December, 1989. Dumping of garbage by the first respondent, Municipal Corporation of Mumbai, is contrary to these Notifications.

14. The Ministry of Environment and Forest had published Solid Waste (Management and Handling) Rules, 2000 ("the Rules", for short). According to these Rules, a suitable buffer zone is required to be provided around the Solid Waste Dumping Ground. A 500 metre wide buffer zone was, therefore, prescribed and instructions to restrict the buffer zone were issued under order dated 12th March, 2001. Subsequently, there were certain objections from some of the affected parties and the matter was referred to the Law Officer, Maharashtra Pollution Control Board, who opined that in order to safeguard the interest of the Corporation, an undertaking-cum-indemnity bond

should be taken from the intending developers. It is also mentioned that the developers are aware of the existing Municipal Dumping Ground in close vicinity of their plots and that they shall not complain in future about this nuisance of dumping ground being in existence.

15. By a Notification dated 25th October, 2001, certain directions were given that no mangroves shall be destroyed during construction and no permission should be granted in the area where mangroves are standing. It is submitted that the Mayor of Mumbai addressed a letter dated 18th September, 2002 to the Municipal Commissioner in which he mentioned that he had visited the Gorai Dumping Ground and he found that there was truth in the grievances made by the petitioners and suggested that the dumping ground area be shifted to an alternative site.

16. It is incorporated in the petition that the Corporation is continuing its illegal activity of dumping garbage in the Gorai Creek without any processing and in clear violation of the environmental rules and regulations.

17.The petitioners have also incorporated that by Resolution No. 284 dated 11th August, 1992, it was confirmed that the land at Gorai Creek and at the western side of the road at Lokmanya Tilak Marg was acquired for the purpose of developing a garden. In the report submitted by the Commissioner to the Corporation, it was confirmed that Gorai Creek, which is known as dumping ground area, is in the No Development Zone, and in view of Section 30(1) of the Maharashtra Regional and Town Planning Act ("MRTP Act", for short), there was no change in the No Development Zone and still the said land continued to remain in the No Development Zone. The petitioners submitted that in gross violation of the rules and regulations, the first respondent is dumping garbage in this area, resulting in health hazards to the public, by reasons whereof, the coastal and environmental ecological balance has been disturbed. It may be pertinent to mention that the Maharashtra Pollution Control Board has given warning to the first respondent-Corporation that if it did not take effective steps to dispose of the garbage in a scientific manner, then action would be taken against the Corporation.

The World Health Organisation has framed rules stipulating that dumping ground should not be in residential area and if at all no other alternative site is available, then the maximum distance of 500 metres should be maintained from residential area. In Gorai, several residential complexes are at a distance of hardly 15 to 20 metres from the site of the Dumping Ground; and they have been badly affected. The petitioners have alleged that apart from dumping of daily 700 truck loads of garbage, weighing 2,250 tonnes, which is beyond the bearing capacity of Gorai Creek, the first respondent has virtually made the said Dumping Ground a burial ground. The petitioners have further alleged that the first respondent has failed to instal any remedial system to safeguard environmental pollution and other restraints, such as -

(i) impairment of air pollution and quality;

(ii) contamination of ground and adjoining surface water due to leaches;

(iii) air pollution due to methane produced from waste decomposition;

(iv) Encroachments.

As a result, the air is highly polluted affecting the health of the inhabitants in that area. Due to pollution, several of Gorai inhabitants are suffering from Mild Restrictions, leading to breathlessness and chest pain. It is also mentioned that the first respondent is causing destruction of mangroves in the course of dumping garbage.

18. The petitioners also submit that conversion of CRZ and No Development Zone into a dumping ground constitutes a major modification in the Development Plan and the MRTP Act within which Gorai area falls. According to the Environmental Status Report, the Gorai Dumping Ground has exhausted its bearing capacity in the year 1999 and even after five years, the situation has worsened and has come to a complete collapse.

19. It is also mentioned in the petition that in Petition for Special Leave to Appeal (Civil) No.18717 of 2001, the learned counsel for the petitioners made a statement before the Hon'ble Supreme Court that

the matter with regard to alternative dumping sites was considered and that on 26th August, 2002, certain discussions took place between the first respondent and the seventh respondent, viz., State of Maharashtra and Union of India, and land of 114 hectares at Kanjur Village was said to be available free from CRZ Notification. According to the petitioners, in view of the availability of this vast alternative site, it is not necessary for the first respondent-Corporation to continue to use Gorai area as a dumping ground, which is affected by the CRZ Notification.

20. The Maharashtra Pollution Control Board has made some observations, which read as under :

(1) Year of starting dumping ground : 1992
(2) Area :15 hectares
(3) Daily dumping of solid waste :1800-2000 mt.
(garbage, debris, silt)
(4) Roads are not adequate in the dumping ground for smooth and proper unloading and dumping.
(5) Except on front side (West) no pucca fencing has been

provided.

(6)Dumping ground is covered by creek/arm of creek at three sides except front side (West).

(7)The height of solid waste dumping has gone as high as 12-15 metres at places.

(8)Black leaches were found flowing freely into the creek. The capacity of the dumping ground is exhausted. At many places the solid waste had reached and partly entered the creek. If dumping continues, the creek may be filled with solid waste.

(9)No arrangement has been made for collection of leaches. This has resulted in free entry of leaches into the creek.

(10)No arrangement has been made for venting out methane gas generated during reactions. This may lead to heavy auto combustion.

(11)Tree plantation programme has been taken on 2.5-3 hectares of land. It was reported that about five thousand trees of different varieties are planted. Growth of trees was found to be good.

(12)Spraying of deodorant was started. However, it was not effective. The severe odour was prevalent in the area and outside also.

(13)BMC has not applied for authorization for handling municipal solid waste as per the provision under the Municipal Solid Waste (Management & Handling) Rules, 2000 in spite of notice served by this office on 25th September, 2002. No proposals

are submitted for compliance of the provisions of the above Rules. Above conditions reflect the unhealthy and unsafe conditions of solid waste dumping by BMC.

21. It may be pertinent to mention that the Deputy Secretary, Urban Development Department, Mantralaya, Mumbai, has also filed an affidavit dated 28th September, 2004. It is mentioned that Gorai has reached the optimum level insofar as the dumping of solid waste by the Bombay Municipal Corporation is concerned and any further dumping would endanger the environment and would be consequently a health hazard for the citizens staying around the said dumping site.

22. In our order dated 29th June, 2005, we have mentioned that in the same matter, despite our orders and order of the Hon'ble Supreme Court, the matter has not been taken seriously both by the Central Government and the State Government. We have also observed in our order that Union of India, the State of Maharashtra and the Corporation must consider the seriousness of the problem, where the garbage waste has reached to the height of almost 12 to 15 metres.

We also observed that this volcano can erupt at any time and there may be serious epidemics in the entire city.

23. On the previous date of hearing, the learned Additional Solicitor General and the learned Associate Advocate General appearing for the Sate of Maharashtra prayed for three weeks' further time to find solution to this outstanding problem. We had clearly indicated in our order that as a last opportunity, we granted three weeks' further time to the respondents, since the matter has been getting adjourned for a very long time, and looking to the seriousness of the problem, no further adjournment shall be granted. Despite further opportunity as prayed by the respondents, no progress has been made in this matter. As a matter of fact, neither Union of India nor the State Government has moved an inch in the matter thereafter. It may be pertinent to mention that this matter came before the Apex Court and their Lordships of the Supreme Court in order dated 21st November, 2003, referred to a joint affidavit filed by the Chief Secretary of the State and the Municipal Corporation dated 26th August, 2002. The relevant portion of the same reads as under :-

"In the said meeting the Collector M. S. D. of the Govt. of Maharashtra pointed out that the Salt Pan Land bearing Survey No.275 (pt) situated at Village Kanjur, Eastern Suburbs admeasuring about 283 hectares is vacant and free from encumbrances and therefore, the said land can be used for landfill purpose. Out of the said 283 hectares of the said land, 141.77 hectares is free from CRZ-1, as shown in the plan by red colour dotted line. The said land admeasuring 141.77 hectares in equal proportion is required to be shared by the Govt. of Maharashtra and Govt. of India...

In view of the same, it was then decided that 50% of the said land admeasuring 141.77 hectares bearing Survey No.275 (pt) shall be handed over to M.C.G.M. free of cost by Govt. of Maharashtra for using the said land as a landfill site.

The remaining 50% of the plot of land admeasuring 141.77 hectares bearing Survey No.275 (pt), which is required to be shared by the Govt. of India, cannot be used by the Govt. of India for development purpose as the same would be in the vicinity of the proposed landfill site, thus, the M.C.G.M. will have 141.77 hectares of land as a landfill site."

24. After considering the submissions made before the Supreme Court by the learned Counsel appearing for the Corporation, the State of Maharashtra and Union of India, the Apex Court directed the Government of Maharashtra to hand over the 50% of the land admeasuring 141.77 hectares bearing Survey No.275 (pt) within a period of three months to the Municipal Corporation of Greater Mumbai and on completion of all the formalities regarding transfer are over, the said land be used as dumping ground, subject to strict observance of law relating to pollution and the present dumping ground, which is continuing at Chincholi Bunder Area, shall be discontinued.

25. It is unfortunate that despite such clear and specific directions of the Hon'ble Supreme Court dated 21st November, 2003, the order has yet not been implemented. The respondents are clearly in default.

26. The learned Additional Solicitor General and the learned Associate Advocate General of Maharashtra have submitted that they have filed an interim application in the Supreme Court. Admittedly, no order has

been passed by the Supreme Court, and merely filing an interim application would not give liberty either to Union of India or the State of Maharashtra to refuse to implement the order passed by the Apex Court.

27. We direct that the order passed by their Lordships of the Supreme Court on 21st November, 2003 be complied forthwith without any further loss of time. No further directions are necessary in this Writ Petition. This Petition is accordingly disposed of.

CHIEF JUSTICE

S.J. VAZIFDAR, J.